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IN THE

# Supreme Court of the United States

OCTOBER TERM 1966

No. 963

MARIAN FORD STUCKER,

*Petitioner,*

v.

THE COLLEGE LIFE INSURANCE COMPANY OF AMERICA,

*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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Central Publishing Company, Inc., Indianapolis, Ind.

# INDEX


Page

ARGUMENT

I. The Courts of Indiana Have Given Full Faith and Credit to the Statutes and Case of Law of Colorado

(a) General ..... 1

(b) Indiana Courts Gave Validity to Colorado Statute ..... 2

(c) Indiana Courts Gave Validity to Colorado Case Law ..... 4

II. Application of Article I, Section 8, of the United States Constitution to the Case at Bar

(a) General ..... 6

(b) Congressional Declaration of War Is Immaterial to Issues Raised in Case at Bar 8

CONCLUSION ..... 13

APPENDICES:

Appendix 1—Colorado Statute - 1963 C.R.S.A., Vol. 4, Ch. 72, Art. 3, §22 ..... A-1

Appendix 2—Full Text of *Pyramid Life Insurance Company v. Masch*, 134 Colo. 70, 299 P. 2d 117 ..... A-3

Appendix 3—Full Text of War Exclusion Clauses Contained in Respondent's Policy of Insurance Issued to Petitioner's Decedent ..... A-7

## CITATIONS

### *Cases*


Page

*Allen v. Allegheny Co.*, 196 U.S. 458, 463 ..... 2

*Beley v. Pennsylvania Mutual Life Insurance Company*, 373 Pa. 231, 95 A. 2d 202 ..... 7, 8, 9

*Finney v. Guy*, 189 U.S. 335, 340 ..... 2

*Pyramid Life Insurance Company v. Masch*, 134 Colo. 70, 299 P2d 117 ..... 5, 8, 9, A-3

*Stucker v. The College Life Insurance Company of America*, ——Ind. App. ——, 208 N. E. 2d 731 .. 3, 5, 6, 7, 8, 9, 10, 11, 12


### *Statutes*


1963 Colorado Rev. Stat. Anno. Vol. 4, Ch. 72, Art. 3, §22 ..... A-1

New York Insurance Code, Ch. 882, Laws of 1939, as amended, Sec. 143(2) ..... 4

28 U.S.C. §1257(3) ..... 4

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## ARGUMENT

### I.

### THE COURTS OF INDIANA HAVE GIVEN FULL FAITH AND CREDIT TO THE STATUTE AND CASE LAW OF COLORADO

(a) *General.* The first federal question raised by the Petitioner, Marian Ford Stucker, considers the full faith and credit clause of the United States Constitution. This question was belatedly raised by the Petitioner for the

first time in her BRIEF IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING, filed in the Appellate Court of Indiana on July 27, 1965; after the Appellate Court of Indiana, in *banc,* had heard the case argued on two separate occasions.

Prior to the Petition for Rehearing, the Petitioner had relied upon but one issue. That one issue is best described in the Petitioner's own words, found at page 52-53 of her APPELLANT'S BRIEF, filed in the Appellate Court of Indiana:

> "The only issue thus presented to this Court and the Court below, as raised by Appellee's demurrer, may be simply stated: 'Do the "war clause"' exclusions as set forth in the policy of insurance executed by appellee upon the life of Appellant's late husband apply in the case of death occurring from bullet wounds received by him while serving in the armed forces of the United Nations in the Korean Action?'"

The Indiana Courts, however, were not unmindful of the full faith and credit requirements levied by the United States Constitution. The Indiana Courts considered the statute of Colorado and decision of the Supreme Court of Colorado cited and relied upon by the Petitioner in support of her contention.

The Indiana Courts gave validity to both the Colorado statute and the decision of the Colorado Supreme Court.

(b) *Indiana Courts Gave Validity to Colorado Statute.* As pointed out in *Finney v. Guy,* 189 U. S. 335, 340, and *Allen v. Allegheny Co.,* 196 U. S. 458, 463, it is not true to say that necessarily in every case where the court of one state is called upon to determine the proper construction of a statute of another state, a question under

the Constitution of the United States automatically arises. Although the Colorado Statute (Appendix 1 of this Brief) was at issue and its meaning was necessarily involved, the duty of construing it rested upon the courts of Indiana since the Colorado courts had not had an occasion to construe the statute relied upon by Petitioner. It was, therefore, a matter of first impression, and incumbent upon the Indiana courts to interpret it. In its written opinion on the merits of the case, the Appellate Court of Indiana considered the subject Colorado statute; 208 N. E. 2d, 731, 734. After quoting the statute, the court said at page 734 of 208 N. E. 2d:

> "Simply stated, said statute provides that where an insurance contract is made in the State of Colorado by a foreign insurance company doing business therein, the insurer, upon presentation of the contract and the proofs required thereunder, shall pay its obligations when due, *after approval thereof by the proper officers of the company at its home office,* through its agent in the county where the contract was made, or at the office of its general agent within the State. We see nothing within the terms of the quoted section of the statute which seeks to impose upon us the duty of adopting any particular construction of the insurance contract, or of applying the law of any certain jurisdiction in arriving at a conclusion as to the herein contested 'obligations' of appellee under the policy. In fact, as we construe said Act, the 'obligations' of the appellee under the policy do not become due and payable until the same are approved 'by the proper officers *at the home office*' of appellee. (Emphasis supplied.) Under the heading of 'General Provisions' of the policy, Clause 13 thereof provides that the 'home office' of appellee, where the premiums are to be paid is 'in the city of Indianapolis, Indiana'."

The Indiana courts considered, gave validity to and, in fact, construed the Colorado statute relied upon by the Petitioner. The Petitioner seeks to invoke the jurisdiction of the United States Supreme Court under 28 U.S.C. § 1257(3), alleging that the Indiana courts violated her rights guaranteed by the "full faith and credit" clause of the United States Constitution. But she has failed to show where the validity of the Colorado statute was denied nor given effect.

The Respondent respectfully suggest that the construction given the Colorado statute, in the absence of any construction placed thereon by the Colorado courts, is reasonable and proper. Had the Colorado legislature sought to give a broader meaning to the subject statute than found there by the Indiana courts, it would very likely have followed, as have several other states, the example of the New York legislature which in the New York Insurance Code, the same being Chapter 882, Laws of 1939, as amended, Section 143(2), provided in part:

> "2. No contract or policy of insurance delivered or issued for delivery in this state shall provide that the rights or obligations of the insured or of any person rightfully claiming thereunder shall, with respect to policies of life, accident or health insurance or annuity contracts upon persons resident in, or to policies of insurance upon property then in this state, or with respect to the liabilities to be incurred by the insured as a result of any activity then carried on by the insured in this state, *be governed by the laws of any state or country other than this state.* This subsection shall not apply to contracts of marine insurance." (our emphasis)

(c) *Indiana Courts Gave Validity to Colorado Case Law.* The Indiana courts considered the Colorado Su-

preme Court case relied upon by Petitioner, the same being *Pyramid Life Insurance Company v. Masch* 134, Colo. 70, 299 P. 2d 117. [See Appendix 2 herein for the entire text of this short opinion]

At pages 734 to 735 of 208 N. E. 2d, the Appellate Court of Indiana examined the *Pyramid Life case,* quoting and emphasizing the following language of the Colorado Supreme Court:

> "Any doubt concerning the meaning of a word or clause in a life insurance policy should be resolved in favor of the insured. *Had the defendant desired to cover the contingency here involved it would have been a simple matter to include proper words to indicate that 'war' meant 'hostilities,' whether or not declared by Congress to be a state of war.*" (Emphasis supplied).

The *war exclusion* clause in the *Pyramid case* only provided:

> "In case of death of the insured * * * *in time of war* * * * the liability of the Company shall be limited to the premium paid hereon * * *." (our emphasis)
>
> (cited in *Pyramid Life Insurance Company v. Masch, supra*)

It was this *war exclusion* clause that the Colorado Court had before it when it stated in its opinion:

> "Any doubt concerning the meaning of a word or clause in a life insurance policy should be resolved in favor of the insured. *Had the defendant desired to cover the contingency here involved it would have been a simple matter to include proper words to indicate that 'war' meant 'hostilities', whether or not declared by Congress to be a state of war.*" (our emphasis)

As a matter of fact, the *war exclusion* clauses which the Indiana courts were construing in this cause, bear no similarity to those being construed by the Colorado Courts in the *Pyramid Life case.* [See Appendix 3 for Respondent's *war exclusion* causes herein]. The Indiana courts weighed the *war clause* exclusions found in the Respondent's policy of insurance, the subject matter of the controversy, and reasoned that they were significantly different than those found in the *Pyramid Life case* and within the reservation held by the Colorado Court when it said therein, "Had the defendant desired to cover the contingency here involved it would have been a simple matter to include proper words to indicate that 'war' meant 'hostilities', whether or not declared by Congress to be a state of war." Thus, it was that the Appellate Court of Indiana said at page 739 of 208 N. E. 2d, regarding this:

> "We see no reason or justification to say that when the parties to the herein policy agreement expressed that 'war' meant war, 'declared or undeclared', they did, in fact, mean a war duly declared by the proper authority. If we were to so say, then we would be in the position of remaking the contract for the parties. *Such is not the proper function of this court.*" (our emphasis)

## II.

## APPLICATION OF ARTICLE I, SECTION 8, OF THE UNITED STATES CONSTITUTION TO THE CASE AT BAR

(a) *General.* The second and final point raised by Petitioner, Marian Ford Stucker, requires the Respondent to discuss the applicability of Congressional War Powers to this cause. The Petitioner's view ignores the language

of the *war exclusion* clauses found in Respondent's policy of insurance, (See Appendix 3) and the intentions of the parties to the insurance contract herein.

The import of the *war exclusion* provisions found in the subject insurance policy was to avoid the very ambiguity complained of by the Petitioner. The Indiana courts devoted much time to the construction of this language in the policy of insurance and concluded that the parties had contracted with reference to war in its real and practical sense and meaning. This must be contrasted to the policy of insurance issued by the Pyramid Life Insurance Company being construed by the Colorado Supreme Court. The Pyramid "war exclusion" clause referred only to *war* without further modification; consequently, the doubt of the meaning of the word *war* was construed against the insurance company. Notwithstanding their decision, the Colorado Supreme Court said it would be possible for an insurance company to include in their *war exclusion* clauses both the formal definition of war, as used in the traditional sense, and the twentieth-century definition of war in fact, though not formally declared by Congress.

At pages 734 to 735 of 208 N. E. 2d, the Appellate Court of Indiana examined the two cases relied upon by the Petitioner to support her position - *Pyramid Life Insurance Company v. Masch, supra,* and *Beley v. Pennsylvania Mutual Life Insurance Company,* 373 Pa. 231, 95 A. 2d 202, (*Cert. denied* 346 U. S. 820).

The Indiana courts found that the distinction between the *Beley case* and *Pyramid Life case,* when contrasted to the case at bar, turned on the wording chosen by the Pyramid Life Insurance Company and the Pennsylvania Mutual Life Insurance Company for their respective *war*

*exclusion* clauses. The Indiana courts quoted the Supreme Court of Colorado in the *Pyramid case*, at page 119 of 299 P. 2d, stating:

> "Any doubt concerning the meaning of a word or clause in a life insurance policy should be resolved in favor of the insured. *Had the defendant desired to cover the contingency here involved it would have been a simple matter to include proper words to indicate that 'war' meant 'hostilities', whether or not declared by Congress to be a state of war.*" (Emphasis supplied.)

and quoted Judge Musmanno in the *Beley case* at Page 218 of 95 A. 2d:

> "If the Beley insurance contract had included the phrase 'undeclared war,' which the Korean Conflict indubitably is, no problem would have arisen because the Korean Conflict, in the constitutional sense, indubitably is an undeclared war."

The Indiana courts concluded at page 735 of 208 N. E. 2d:

> "In the light of the distinction of the clauses in the decisions cited by appellant and the clauses in the present policy, and further considering the references made in the Pyramid and Beley cases to possible words of explanation, we feel that those cases cited by appellant, and specifically the Pyramid case, are not controlling in the case at bar."

(b) *Congressional Declaration of War is Immaterial to Issues Raised in Case at Bar.* From pages 735 through 740, of 208 N. E. 2d, the Appellate Court of Indiana examined the *war-exclusion* clauses in the Respondent's policy of insurance. The Appellate Court of Indiana determined that the Respondent had used an expanded definition of *war* in its *war clauses*, which, unlike those

used in *Beley* and *Pyramid* relied upon by Petitioner, were capable of broader construction.

In discussing this issue below, the Appellate Court of Indiana said at pages 735 and 736 of 208 N. E. 2d:

> "* * * The pertinent allegations of the amended complaint are that the insured died as a result of bullet wounds in the Country of Korea while in the service of the United Nations.
>
> "Appellant's whole advanced argument, aside from the already disposed of contention that we must be governed by the law of Colorado, is to the effect that '[b]efore the Korean Action can be considered legally as a war within the meaning of the Constitution of the United States it must be recognized and declared as a war by the Congress of the United States' which, appellant states, 'Congress * * * to this day has not in its wisdom seen fit to do so.', and further, that 'war service' can only mean, legally speaking, declared war service. * * *"
>
> "The difficulty we encounter with appellant's proposals in twofold. *First,* there is no allegation in the amended complaint that the United States was involved in the 'Korean Action' on October 16, 1952, or that the insured, at the time of his fatal injury, was there in the military, naval or air forces of the United States; and, *Second,* the referred to exclusion provision of the policy does not, by expression, limit the word 'war' to any country. * * *"

The Appellate Court of Indiana, at page 736 of 208 N. E. 2d, then said:

> "In defining 'war service', the exclusionary clauses of the regular policy provide expanded reference to 'any country or *international organization* at war.' (Emphasis supplied.) In view of this language and the specific definitions of the terms employed, we

fail to perceive the applicability, under the fact allegations of the amended complaint, of appellant's contention that the Congress of the United States had not formally declared war. The amended complaint puts the insured in the armed forces of the United Nations, but appellant advances no argument or discussion nor makes any reference to the legal consequences of such alleged fact as regards the involved exclusionary provision.' * * *"

"* * * But we find nothing in the amended complaint or in the policy of insurance which avers or shows that the insured was serving in the military arm or branch of the United States forces when he received his fatal injury. * * *"

After further explanation, the Court concluded, at page 737 of 208 N. E. 2d, that:

"* * * Under the challenged allegations of appellant's amended complaint it is not necessary to find that the United States was at war; it is sufficient, in passing upon whether the amended complaint states a cause of action, to find whether, on October 16, 1952, a war existed between North Korea and South Korea (referred to in the amended complaint as the 'Korean Action'). Much time and labor could be expended in setting forth herein, in detail, the factual situation which establishes quite clearly that on October 16, 1952, North Korea and South Korea were then actually at war with each other. * * *"

It was upon this foundation that the Court held at page 739 of 208 N. E. 2d:

"The parties here agreed, as stated in the written contract of insurance entered into between them, that 'war' means 'war, declared or undeclared.' We must give effect to what the parties expressly agreed upon and we fail to find any authority, and none has been

called to our attention which authorizes us to disregard the express language of the parties, or place a strained interpretation thereon contrary to the intent of the parties expressed in words of common understanding and acceptation.

"The exclusionary provisions here under surveillance are a private matter between the parties, unaffected by public interest. The general rules governing the construction of such contracts must be applied and, in determining the intent of the parties, the terms employed must be understood and interpreted in their popular and ordinary meaning. There is nothing in the insurance contract before us to indicate that any special or different meaning was intended by the parties, or that an absurd or unreasonable result would attain in applying the rule of interpretation according to the ordinary and popular meaning of the phraseology and wording used in the contract."

The Court applied the same logic to the *war exclusion* clause of the double indemnity benefit of the subject insurance policy, saying at page 739 of 208 N. E. 2d:

"What we have already said and determined applies with full and equal force to the war exclusionary provision, above set out, pertaining to the contract limitation of liability of appellee for double indemnity benefits. It is therein provided that double indemnity benefits shall not apply if the insured's death 'is caused or contributed to by war.' We have held that the Korean Conflict alleged in appellant's amended complaint was war. The exclusionary provision does not restrict the word 'war' to a war in which the United States is engaged. Count II of the amended complaint alleges that the deceased, insured, 'sustained bodily injuries affected [effected] directly to accidental violent and external means while engaged in the Korean Action' from which injuries he died on October 16, 1952. Thus, it appears from the

amended complaint the insured's death was contributed to by the Korean Action which we have held to be a war."

The Court, mindful that the Petitioner had relied heavily on the Colorado case, said, at page 738 of 208 N. E. 2d:

> "Even if we were to concede, as appellant strongly urges, that we are bound by the holding of the Colorado Court in *Pyramid Life Insurance Company v. Masch, supra,* no benefit would be derived therefrom because that court specifically states that it was asked to take judicial notice that the engagement of 'United States troops' in Korea constituted war. As we have heretofore pointed out, no such question is here before us."

The Indiana Courts found Respondent's *war exclusion* clauses to be sufficiently broad to include "undeclared" war, saying at page 740, of 208 N. E. 2d:

> "In our opinion, when the policy of insurance, which is the subject of this suit, was issued, the parties contracted with reference to war in its real and practical sense and meaning, and we, therefore, conclude that neither Count I nor Count II of appellant's amended complaint stated a cause of action for recovery of the Ordinary Death Benefit or the Double Indemnity Death Benefit of the insurance contract herein."

Therefore, to make the Respondent's *war exclusion* clauses operative, it was unnecessary to show that Congress had formally declared war.

## CONCLUSION

For each and all of the foregoing reasons, the Respondent respectfully suggests to the Court that Petitioner's Writ of Certiorari to the Supreme Court of Indiana be denied.

Respectfully submitted,

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